



May 2, 2001

Ms. Patricia Muniz-Chapa  
Public Information Coordinator  
The University of Texas System  
201 West Seventh Street  
Austin, Texas 78701-2902

OR2001-1784

Dear Ms. Muniz-Chapa:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 146706.

The University of Texas at Austin (the "university") received a request for twelve categories of information. You seek a decision with respect to information that the university deems to be responsive to the following requested categories of information:

(8) All correspondence, emails, interview notes, information and communication [sic] in whatever form, notes, correspondence, email, letters, or other forms, related to the UT finding that Professor Lino Graglia of the UT Law School is protected by the First Amendment for his remarks and behaviors related to those remarks, about minorities in September, 1997.

(11) All annual reports turned in by the faculty in the Department of Journalism for the 1998-1999 academic year.

You claim that the responsive records contain information that is excepted from disclosure under sections 552.026, 552.101, and 552.114 of the Government Code and the federal Family Educational Rights and Privacy Act of 1974 ("FERPA"), 20 U.S.C. § 1232g. You inform us that the remaining requested information will be released to the requestor. We

have considered the exceptions you raise and have reviewed the representative samples of information you submitted.<sup>1</sup>

We first note that the submitted documents are completed reports. Section 552.022(a) of the Government Code provides that

*the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:*

- (1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body[.]

Gov't Code § 552.022(a)(1) (emphasis added). Thus, the university must release the submitted reports, unless they contain information that is expressly confidential under other law.

Section 552.101 of the Government Code excepts from required public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This exception protects information that is made confidential by another statute. FERPA provides that no federal funds will be made available under any applicable program to an educational agency or institution that releases personally identifiable information, other than directory information, contained in a student's education records to anyone but certain enumerated federal, state, and local officials and institutions, unless otherwise authorized by the student's parent. See 20 U.S.C. § 1232g(b)(1); see also 34 C.F.R. § 99.3 (defining "personally identifiable information").

Section 552.026 of the Government Code incorporates FERPA into chapter 552 of the Government Code. See Open Records Decision No. 634 at 6-8 (1995). Section 552.026 provides as follows:

This chapter does not require the release of information contained in education records of an educational agency or institution, except in conformity with the Family Educational Rights and Privacy Act of 1974, Sec. 513, Pub. L. No. 93-380, 20 U.S.C. Sec. 1232g.

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<sup>1</sup>This letter ruling assumes that the submitted representative samples of information are truly representative of the responsive information as a whole. This ruling neither reaches nor authorizes the university to withhold any responsive information that is substantially different from the submitted information. See Gov't Code § 552.301(e)(1)(D); Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

Gov't Code § 552.026. "Education records" under FERPA are those records that contain information directly related to a student and that are maintained by an educational agency or institution or by a person acting for such agency or institution. *See* 20 U.S.C. § 1232g(a)(4)(A); *see also* 34 C.F.R. § 99.3 (defining "education records"). Information must be withheld from required public disclosure under FERPA only to the extent "reasonable and necessary to avoid personally identifying a particular student." *See* Open Records Decision Nos. 332 at 3 (1982), 206 at 2 (1978).

Section 552.114(a) of the Government Code requires the withholding of "information in a student record at an educational institution funded wholly or partly by state revenue." Gov't Code § 552.114(a). This office generally has treated "student record" information under section 552.114(a) as the equivalent of "education record" information that is protected by FERPA. *See* Open Records Decision No. 634 at 5 (1995).

In Open Records Decision No. 634 (1995), this office concluded that: (1) an educational agency or institution may withhold from public disclosure information that is protected by FERPA and excepted from required public disclosure by sections 552.026 and 552.101 of the Government Code without the necessity of requesting an attorney general decision as to those exceptions, and (2) an educational agency or institution that is state-funded may withhold from public disclosure information that is excepted from required public disclosure by section 552.114 of the Government Code as a "student record," insofar as the "student record" is protected by FERPA, without the necessity of requesting an attorney general decision as to that exception. *See* Open Records Decision No. 634 at 6-8 (1995).

You represent to this office that the submitted documents contain "student names and student identifiable references," which you have highlighted. You contend that this information constitutes education records that the university must withhold under FERPA and sections 552.026, 552.101, and 552.114 of the Government Code. You note that the requestor is an instructor at the university. You assert, however, that FERPA "allows the dissemination of student information to faculty only if the school has determined that the teacher has a legitimate educational interest." *See* 20 U.S.C. § 1232g(b)(1)(A). You also state that "[l]egitimate educational interest means that the information or records requested are relevant and necessary to accomplish some task or determination; and the task or determination is an employment responsibility for the inquirer or is a properly assigned subject matter for the inquirer's employment responsibility." You represent to us that "[i]n this case, U.T. has made the determination that the requestor does not have a legitimate educational interest to have access to this information."

We agree that the university must withhold any responsive student-identifying information that is protected by FERPA, unless FERPA permits the university to release that information to the requestor. Based on your representation that the highlighted information constitutes student-identifying information and your determination that the requestor has no right of access to such information under FERPA, we agree that the university must withhold the

highlighted information under FERPA and sections 552.026, 552.101, and 552.114 of the Government Code. Moreover, we have marked several other items of student-identifying information. The university also must withhold that information from the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

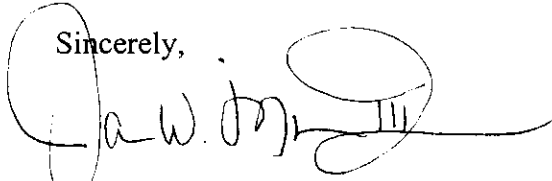
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "James W. Morris, III". The signature is fluid and cursive, with a large loop at the end.

James W. Morris, III  
Assistant Attorney General  
Open Records Division

JWM/rr

Ref: ID# 146706

Encl: Marked documents

cc: Dr. Mercedes Lynn de Uriarte  
Associate Professor  
2101 Trail of the Madrones  
Austin, Texas 78746-2332  
(w/o enclosures)